

Ex. KK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

HOLCOMBE, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Civil Action No.
)	
UNITED STATES OF AMERICA,)	5:18-CV-00555-XR
)	
Defendant.)	(Consolidated cases)

REMOTE ORAL VIDEOTAPED DEPOSITION
OF THE UNITED STATES AIR FORCE
BY ITS CORPORATE REPRESENTATIVE
COLONEL ROBERT M. FORD, JR.
Thursday, June 18, 2020

Reported by
Rebecca Callow, RMR, CRR, RPR
Job No. U061820

1 were never reported to the FBI by the
2 Security Forces. Correct?

3 A. Reported by the Security Forces? That is
4 correct. They were not.

5 Q. And that was even after the -- you're aware
6 that the DoD/IG report in 2015 came out in
7 February 2015. Right?

8 A. Yes. I'm aware of that.

9 Q. And after the DoD/IG in 2015 reported that
10 there were still significant problems, failure rates
11 around 30 percent within the Air Force, generally,
12 and, actually, it was higher within the
13 Security Forces. Correct?

14 A. That is correct.

15 Q. That even after that report in February of
16 2015, the Security Forces -- the Air Force
17 Security Forces never went back and reported
18 Devin Kelley's fingerprints between 2015 and 2017,
19 the day of the shooting. Correct?

20 A. They weren't asked to, according to that
21 DoD/IG report.

22 Q. Well, regardless of whether they were asked
23 to by the IG report, that's not really relevant, is
24 it?

25 MR. STERN: Objection.

1 A. It is if you're bringing up --

2 BY MR. ALSAFFAR:

3 **Q. You can answer my question. Go ahead.**

4 A. All I was going to say is it's relevant
5 because you're referencing the DoD/IG report.

6 What the DoD/IG asked the Air Force to
7 do was to submit those qualifying convictions that
8 were not submitted during that time period.

9 Unfortunately, Devin Kelley's
10 conviction occurred after that time period. His
11 conviction was November of 2012, when that range of
12 that DoD/IG report ended on 31 October.
13 Unfortunately it did not include that. That's what
14 I was trying to say.

15 **Q. Oh, no. Right. And I understand that.**
16 **Just so the Court understands really what you're**
17 **saying, let's really talk about what you're actually**
18 **saying here.**

19 In order to follow up and see if the
20 Air Force was still complying with the reporting
21 requirement, the DoD/IG just took a sample size from
22 June 2010 to October 31st, 2012. Right? They just
23 took a sample size. Correct?

24 A. Correct. Correct.

25 **Q. And just based on just that small sample**

1 expertise.

2 We also have your pre-deployment type
3 of mission. So you have your mission that when
4 you're deployed overseas, your, you know, forward
5 operating area where you have to actually do
6 installation defense inside the wire, so to speak,
7 outside the wire, as well, a little bit.

8 My point in all that is it's so
9 wide-ranging and far-encompassing, there's so many
10 things that a Security Forces member has to learn
11 and develop the skill set to do over the course of
12 their career or enlistment.

13 **Q. What about Security Forces investigators,**
14 **specifically? Can you talk about their wide-ranging**
15 **skill set?**

16 A. Yes. So, for example, they have to be
17 taught and become experienced for witness
18 interviews, for example. That's a very necessary
19 skill to have. Setting up crime scenes, protecting
20 evidence, the processing of evidence, making sure
21 chains of custody for evidence are airtight and
22 ready to go.

23 They also serve a responsibility
24 for -- for example, if we've got a high-risk
25 individual on the installation and a hostage

1 negotiation type of response, they're responsible
2 for doing those kinds of things.

3 Their role and responsibility is so
4 wide-ranging, much, much more than the fingerprint
5 process, which is central to this -- a lot of this
6 discussion. The point is they are required to know
7 so many more things, and this is a small subset of
8 that.

9 **Q. Are they required to be trained on all of**
10 **those skill sets?**

11 A. Oh, yes. Definitely.

12 So the same process. The vast
13 majority of that's going to be training with the
14 military police investigation school.

15 That's why the vast majority of those
16 topics are taught there, because -- there are
17 criteria that we use to decide what's going to be
18 taught at certain schools.

19 For example, it would be the frequency
20 of the task, the operational relevance of the task,
21 the criticality of the task, and then finally the
22 difficulty of the task. All those elements fall
23 into play to determine what topics are going to be
24 taught at those schools, whether it's a
25 Security Forces academy, military police

1 this witness's expertise. Calls for speculation.

2 A. So the submission of fingerprints after
3 having probable cause, that would prevent them --
4 prevent someone from purchasing a firearm, if that's
5 what you're asking.

6 BY MR. STERN:

7 Q. Well, is it a prohibited offense under the
8 Gun Control Act, to the extent that you know?

9 MR. ALSAFFAR: Objection --

10 A. Yes.

11 MR. ALSAFFAR: -- outside the scope of
12 the witness's expertise.

13 BY MR. STERN:

14 Q. Okay. So as a result of this
15 investigation, you have already testified regarding
16 the final disposition. Is that correct?

17 A. Yes.

18 Q. Okay. So, in fact, you previously
19 testified that, as a result of the Security Forces
20 investigation, Kelley received a letter of
21 reprimand. Is that correct?

22 A. Yes.

23 MR. STERN: And, Lieutenant Colonel
24 Phillips, if you can pull up what has previously
25 been marked as Exhibit 6, that letter of reprimand.

1 BY MR. STERN:

2 Q. Just to be clear, your previous testimony
3 was that, as a result of the Security Forces
4 investigation, Devin Kelley was given a letter of
5 reprimand on April 17th, 2012. Is that correct?

6 A. Yes.

7 Q. And I believe you testified that a letter
8 of reprimand is, quote, a low bar?

9 A. Yes. For an assault charge, that is a low
10 bar.

11 Q. What do you mean by "a low bar"?

12 A. My point being that commanders, for that
13 kind of offense, would normally be offering
14 nonjudicial punishment or be ready to go to
15 court-martial.

16 So if they felt that they had enough
17 evidence to support going to a court-martial, they
18 would either do that or offer nonjudicial punishment
19 in lieu of a court-martial, because that's how the
20 process works.

21 So if they felt comfortable enough to
22 go to a court-martial, they have to -- excuse me.

23 When you offer nonjudicial punishment,
24 you're stating that you have enough evidence to go
25 to a court-martial.

1 Because they did not offer nonjudicial
2 punishment anywhere documented in here, and they
3 went straight to a letter of reprimand, that leads
4 me to believe, from a commander's position, that
5 they questioned the evidence put before them to
6 bring it to a court-martial-martial, and the low
7 bar, being a letter of reprimand, speaks to that.

8 MR. ALSAFFAR: Objection --

9 BY MR. STERN:

10 **Q. And let me --**

11 MR. ALSAFFAR: Sorry. I've got to get
12 my objection on the record.

13 My objection is actually to the
14 answer. That was speculation by the Colonel.

15 BY MR. STERN:

16 **Q. Let me break this down in smaller bites, so**
17 **to speak, Colonel.**

18 Is the letter -- is a letter of
19 reprimand the equivalent of a court-martial?

20 A. No.

21 **Q. Is a letter of reprimand the equivalent of**
22 **a judicial decision?**

23 A. It is not the equivalent of a judicial
24 decision.

25 **Q. So is it accurate to state that Kelley was**